



March 3, 2006

Ms. Marlene H. Dortch  
Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

***Ex Parte Submission***

Re: Communications Assistance for Law Enforcement Act and Broadband  
Access and Services, ET Docket No. 04-295

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Dear Ms. Dortch:

On March 2, 2006, the undersigned and Florence Kao of Levine, Blaszak, Block & Boothby, LLP, met with Ian Dillner, Legal Advisor, Office of the Chairman, to discuss issues of concern to enterprise customers raised by the Commission's August 5, 2005 First Report and Order and Further Notice of Proposed Rulemaking in the docket captioned above.

We described the network architecture and service configurations typically used by enterprise customers deploying VoIP technologies at their locations. For purposes of that discussion, we referred to the schemata attached to this letter. As illustrated in the attachments, enterprise customers typically deploy VoIP technologies on their internal private networks. VoIP traffic on those networks consists primarily of intra-corporate communications within or between the enterprise customer's premises. Enterprise customers usually convert traffic bound for points on the PSTN to traditional circuit-switched transmission protocols (*i.e.*, TDM) before hand-off to the PSTN, typically via a gateway function in their IP PBXs. The third diagram in the attachment describes an enterprise customer who uses third party data processing and retrieval functions (*e.g.*, to support call center services), converts incoming TDM traffic from the PSTN to IP via a gateway function in the VoIP facilities, combines the IP voice traffic with associated data, and terminates both at the same designated location. In all of the schemata, the enterprise customer accesses the PSTN via standard TDM facilities obtained from a facility-based common carrier and the IP technology is deployed using facilities that may be owned, leased, managed, and/or outsourced to a systems integrator, applications provider, information services provider, or other third party.

We observed that the portion of the *CALEA Broadband Order*<sup>1</sup> relating to VoIP services (*see CALEA Broadband Order* at paras. 39-45) does not appear to apply to the service configurations illustrated in the attachments because those configurations do not

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<sup>1</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005) ("*CALEA Broadband Order*").



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satisfy the four-pronged test for “interconnected VoIP services” originally promulgated in *IP-Enabled Services and 911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 at paras 3-5, 36-53 (2005) (“*VoIP 911 Order*”) and cited in the *CALEA Broadband Order*. In addition, footnote 78 of the *VoIP 911 Order* appears to distinguish “interconnected VoIP services” from the VoIP services that enterprise customers obtain when they use an IP PBX in conjunction with other telecommunications services or VoIP services to exchange traffic with points on the PSTN in non-IP format, *e.g.*, an IP PBX-equipped office connected to the PSTN via an ISDN PRI line. Whether enterprise customers purchase their PSTN connection from a facility-based LEC or from a third party, they are not purchasing “a single service that provides the functionality” customers obtain when they purchase “interconnected VoIP services” which meet the *Order’s* four-pronged test. *VoIP 911 Order*, 20 FCC Rcd 10245 at footnote 78.

We also observed that the private network services illustrated in the attachments are exempt from CALEA under the private network exemption set forth in the statute at 47 U.S.C. § 1002(b)(2)(B). Consistent with footnote 100 of the *CALEA Broadband Order*, we noted that only the provider of the facility that supports the connection of the private network to a public network (indicated on the attachments as the “PSTN facilities” connecting the customer premises to the PSTN) is subject to CALEA and not the facility-based provider’s customer of record for services provided over that facility, regardless of whether the customer of record is the enterprise user of the service or its third party provider of information services, applications, or systems integration.

Finally, we noted the relevance of the Commission’s earlier decisions exempting resellers from the requirements of CALEA so long as the reseller’s underlying facility-based provider is a common carrier. In the Commission’s original docket to implement CALEA following passage of the Act, the Commission concluded that “resellers’ responsibility under CALEA should be limited to their own facilities. Resellers will therefore not be held responsible for the CALEA compliance responsibilities of the carrier whose services they are reselling with respect to the latter’s underlying facilities.” *Communications Assistance for Law Enforcement Act*, Second Report and Order, 15 FCC Rcd 7105, 7118 at para. 24 (1999). In its Second Order on Reconsideration in that docket, the Commission clarified that “exercising [its] authority under section 102(8)(C), [it] exempted resellers from those requirements to the extent that they resell services of other, facilities-based carriers.” *Communications Assistance for Law Enforcement Act*, Second Order on Reconsideration, 16 FCC Rcd 8959, 8971 at para. 37 (2001). Under these decisions, CALEA applies to the facility-based provider of the PSTN connection indicated on the attachments and not to the enterprise customer of a service provided over the facility or its third party provider of information services, applications, or systems integration.



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Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), this letter is being filed with the Office of the Secretary.

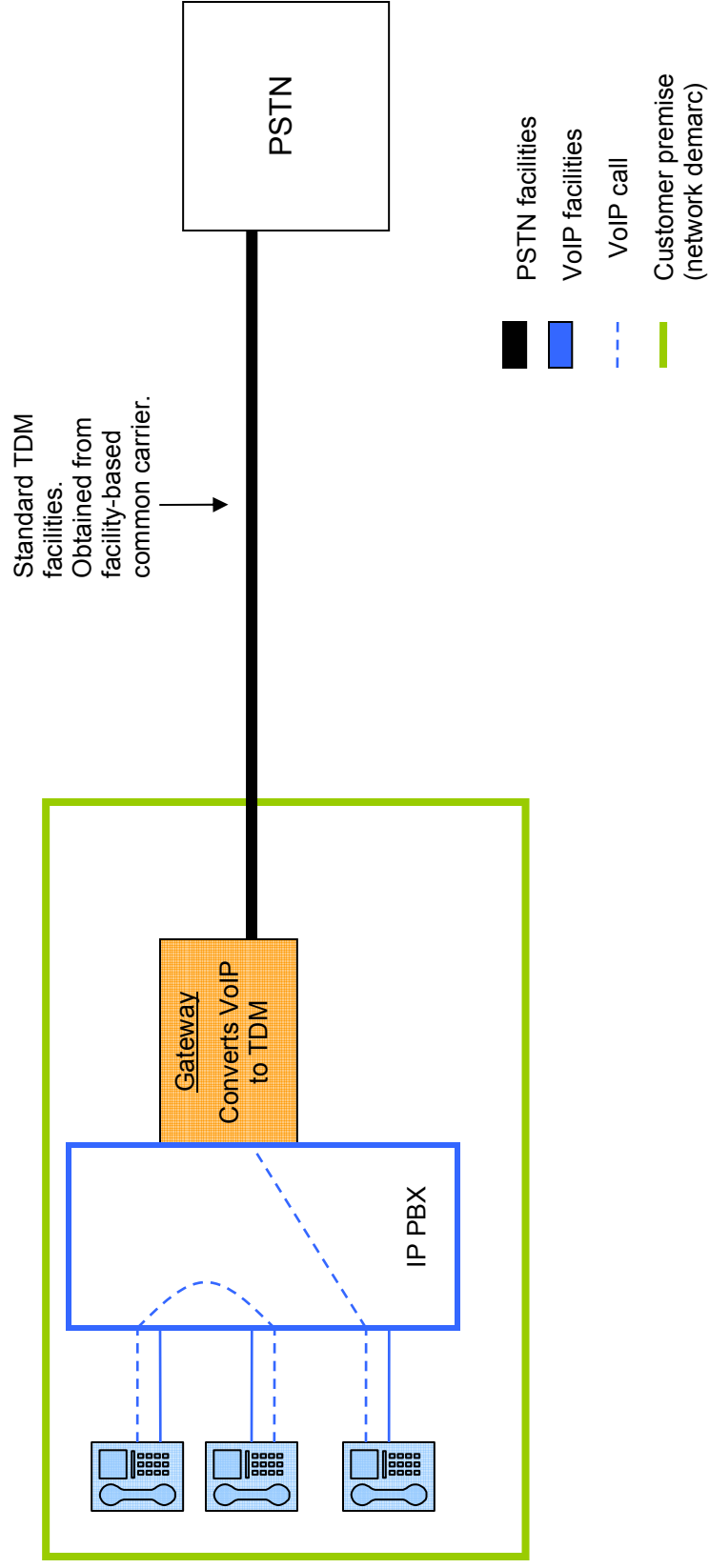
Sincerely,

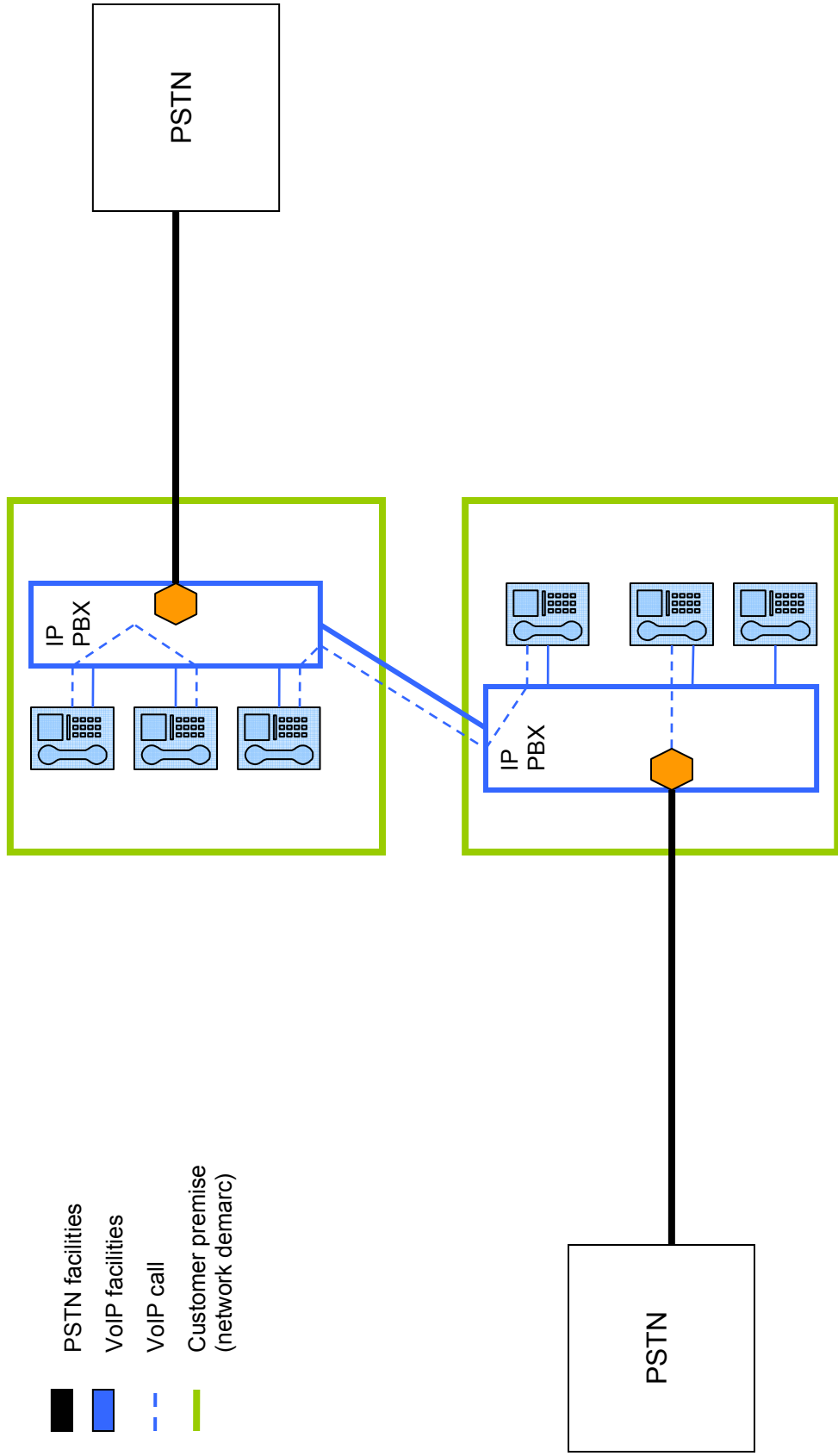
A handwritten signature in black ink that reads 'Colleen Boothby'.

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Colleen Boothby  
Levine, Blaszak, Block & Boothby, LLP

Attachments  
cc: Ian Dillner





- PSTN facilities
- VoIP facilities
- VoIP call
- Customer premise (network demarc)

